

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

04 JAN 21 PM 2:29

U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES OF AMERICA

v.

RICHARD M. SCRUSHY,

Defendant.

Case No. CR-03-BE-0530-S

**RENEWED MOTION OF THE UNITED STATES
TO VACATE ORDER SETTING HEARING OR,
IN THE ALTERNATIVE, TO CONTINUE HEARING DATE**

Comes now the United States of America, by and through its counsel, Alice H. Martin, United States Attorney for the Northern District of Alabama, and renews its motion to vacate the Court's order setting a hearing on the defendant's *Motion to Modify the Court's Restraining Order of November 3, 2003* or, in the alternative, to continue the hearing date. As grounds therefor, the Government states as follows:

1. That on November 26, 2003, the defendant filed his motion seeking to modify the Court's Restraining Order of November 3, 2003. Following submission of briefs by both parties, this Court held a conference with counsel on December 11, 2003, to discuss the defendant's motion.

2. That on December 19, 2003, this Court entered its order setting the defendant's motion to modify for a hearing; that hearing is presently scheduled for Thursday, January 22, 2004, at 1:30 p.m.

3. That as of December 11, 2003, the defendant was fully aware of the Court's expressed desire to be **fully prepared** prior to any hearing in this case and, in that regard, of his obligation to this Court to specifically identify what properties he claims were wrongfully restrained and his support for that claim. The defendant deliberately failed to meet that obligation in a meaningful way.

4. That the defendant's *Supplemental Filing in Support of His Motion to Modify the Court's Restraining Order Dated November 3, 2003*, filed on January 20, 2004, at 1:35 p.m. – less than forty-eight hours prior to the hearing – certainly fails to comply with the spirit, if not the letter, of the Court's directive. Either the defendant was not going to produce the requested information for the Court (until his hand was forced by the government's motion of January 15, 2004, seeking to vacate the order which set that hearing), or the defendant deliberately planned to wait until the very last minute to file that information to gain whatever tactical advantage possible. This action underscores the defendant's apparent belief that the rules that govern everyone else simply do not apply to him.

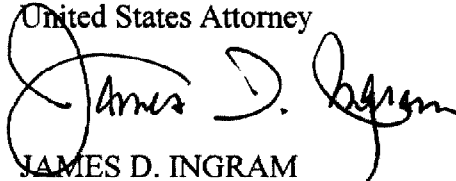
5. Furthermore, the defendant's last-minute filing appears to be part of a concerted effort to gain an unfair advantage by whatever means available. On Friday, January 16, 2004, defense counsel informed government counsel that the defendant planned to subpoena IRS Special Agent Charles Traywick; on Monday, January 19, 2004 (a federal holiday), the defendant served a subpoena on the accounting firm of Clifton Gundersen, LLP, located near Baltimore, Maryland. As part of each subpoena, the defendant requested any and all work papers related to the restraining order. Even if these papers were properly subject to being produced, it would be physically impossible to do so by the hearing date. In addition, on January 20, 2004, the defendant filed his *Opposition to Motion to Vacate Order Setting Hearing* and his *Supplemental Motion to Modify the Court's Restraining Order Dated November 3, 2003*; these motions also require the government's attention to prepare an adequate response.

6. The United States again objects to any attempt by the defendant that would prevent the government and this Court from being adequately prepared for a meaningful hearing on this or any other issue in this case.

Wherefore, based on the foregoing the United States again respectfully requests this Court to vacate the order setting a hearing for January 22, 2004, and that the hearing on the defendant's motion to modify be cancelled based upon the defendant's failure to comply with this Court's directives.¹ Alternatively, the United States requests that this hearing be continued until further order of this Court to afford the government an opportunity for adequate preparation.

Respectfully submitted this 21st day of January, 2004.

ALICE H. MARTIN
United States Attorney



JAMES D. INGRAM
Assistant United States Attorney
Northern District of Alabama



RICHARD C. SMITH
Deputy Chief, Fraud Section
Criminal Division
U.S. Department of Justice
Washington, D.C.

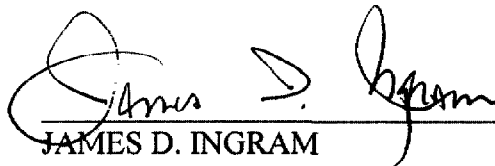
¹ It remains the position of the United States, for the reasons set forth in its *Response in Opposition to the Defendant's Motion to Modify the Restraining Order of November 3, 2003*, filed on December 5, 2003, that the defendant is not entitled to a post-restraint, pre-trial hearing in this case.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following by hand delivery this 21st day of January, 2004:

Abbe David Lowell, Esquire
Chadbourn & Parke, LLP
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036
FAX (202) 974-5602

Arthur W. Leach, Esquire
2310 Marin Drive
Birmingham, Alabama 34243
FAX (205) 824-0321

A handwritten signature in black ink, appearing to read "James D. Ingram", is written over a horizontal line.

JAMES D. INGRAM
Assistant United States Attorney
1801 Fourth Avenue North
Birmingham, Alabama 35203
(205) 244-2130